

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

UNITED STATES DISTRICT COURT

for the

Northern District of New York

____ Division

Samuel Nicklas Brewer

Case No.

1:17-cv-839 (LEK) DJS)

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

New York State Department of Health
Howard Zucker - Commissioner of Health
John Allen - Special Assistant

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

AUG 01 2017

LAWRENCE K. BAERMAN, CLERK
ALBANY

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

| | | | |
|------------------|-----------------------|--------------|-----------------|
| Name | Samuel Nicklas Brewer | | |
| Address | 161B Lake Avenue | | |
| | Saratoga Springs | NY | 12866 |
| | <i>City</i> | <i>State</i> | <i>Zip Code</i> |
| County | Saratoga | | |
| Telephone Number | 518-306-5457 | | |
| E-Mail Address | | | |

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

| | | | |
|---------------------------|---|--------------|-----------------|
| Name | Howard Zucker | | |
| Job or Title (if known) | Commissioner of the New York State Department of Health | | |
| Address | Corning Tower, Empire State Plaza | | |
| | Albany | NY | 12237 |
| | <i>City</i> | <i>State</i> | <i>Zip Code</i> |
| County | Albany | | |
| Telephone Number | 866-881-2809 | | |
| E-Mail Address (if known) | | | |

☐ Individual capacity ☒ Official capacity

Defendant No. 2

| | | | |
|---------------------------|--|--------------|-----------------|
| Name | John Allen | | |
| Job or Title (if known) | Special Assistant to the Director of the NYS Office of Mental Health | | |
| Address | 44 Holland Avenue | | |
| | Albany | NY | 12229 |
| | <i>City</i> | <i>State</i> | <i>Zip Code</i> |
| County | Albany | | |
| Telephone Number | 1-800-597-8481 | | |
| E-Mail Address (if known) | | | |

☐ Individual capacity ☒ Official capacity

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)**Defendant No. 3**

Name _____

Job or Title (if known) _____

Address _____

City _____

State _____

Zip Code _____

County _____

Telephone Number _____

E-Mail Address (if known) _____

☐

Individual capacity

☐

Official capacity

Defendant No. 4

Name _____

Job or Title (if known) _____

Address _____

City _____

State _____

Zip Code _____

County _____

Telephone Number _____

E-Mail Address (if known) _____

☐

Individual capacity

☐

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐Federal officials (a *Bivens* claim)☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

United States Constitution Bill of Rights - Second Amendment, Due Process according to Fifth and Fourteenth Amendments

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

See Attachment A

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

On a New York State Department of Health computer terminal, a flag was inserted into the Federal NICS database. This occurred either at 44 Holland Avenue in Albany, New York or at another State owned office.

- B. What date and approximate time did the events giving rise to your claim(s) occur?

February 21st, 2014, time unknown.

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

The Federal Bureau of Investigation informed me of a database flag entry via letter on April 10th, 2014 by the New York State Office of Mental Health after I attempted to apply for relief through their office. (See Attachment B - US DOJ FBI Letter of 4/10/2014). John Allen has collected erroneous information through third parties for several years and communicated this false information to law enforcement agencies in violation of the Plaintiff's Constitutional right to privacy in order to, ostensibly, cover his tracks regarding placing the database flag (See Attachment C - Inappropriate Police Report).

I have not been adjudicated as being mentally defective and I have not been committed to a mental institution. I have not been presented any evidence which would justify the database flag being placed.

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

In conjunction with an extreme case of identity theft and being the subject of foreign surveillance, my reputation has been tarnished, which has derailed my career earning capacity. (See Attachment D - Letter from the US Department of Office of Personnel Management). The New York State Department of Health and local law enforcement agencies are being fed false information with the intention of harassing me and creating a false narrative.

I am a decorated former United State Air Force Captain who was in the uniformed service from May of 2002 until May of 2012. My career was successful, and during my military service, I was a Pilot of the C-130 Hercules aircraft and held a DOD security clearance and other special qualifications. In addition to my military service, my parallel civilian career in the energy industry and my educational background (undergraduate degree in Nuclear Engineering) from 2005 until 2013 has made me a target for foreign collection and discrediting. The actions of the New York State Department of Health have damaged my income earning potential.

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I wish for the Court to award me damages that amount to the following:

- ✓ Compensatory - \$200,000 per year from February 21, 2014 until the present time (\$700,000). \$250,000 per year from present time until retirement age of 65 years old (\$7,000,000). My past earnings are documented via US tax returns through 2012 and then were abruptly halted. I have ample educational, statistical, and documented ability tests that can be reviewed by the Court that support my income levels.
- ✓ Punitive - \$5,000,000 - the labeling of someone as having a mental defect and then intentionally communicating this information to others can destroy someone's reputation. I have incontrovertible proof in my possession of this taking place, and it is likely that there is much more that can be obtained after discovery.
- ✓ Removal of the database flag
- ✓ Issue an injunction preventing the NYS DOH from future use of the Federal database without a valid court order

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: July 31st 2017

Signature of Plaintiff

Printed Name of Plaintiff

Samuel M. Brewer
Samuel M Brewer

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

Brewer v. The New York State Department of Health

Attachment A:

II: Basis for Jurisdiction, Explanation of Defendant(s) Actions

Acting under the color of the New York State Safe Act and using inappropriate interpretations of New York State Mental Hygiene Laws, Howard Zucker and John Allen placed a flag in the FBI owned and maintained National Instant Criminal Background Check System (NICS) that the Plaintiff had been "committed to a mental institution or adjudicated as mentally defective". The Plaintiff was not informed of the action taken or given any evidence or reason why the action was taken in violation of his due process rights. In addition, the database flag prevents the Plaintiff from exercising his Second Amendment Rights and has resulted in employment problems and reputational damage.



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

April 10, 2014

Mr. Samuel Nicklas Brewer
Post Office Box 399
Saratoga Springs, NY 12866

SUBJECT: National Instant Criminal Background Check
System (NICS)
Voluntary Appeal File (VAF)

Dear Mr. Brewer:

The Appeal Services Team (AST) of the FBI Criminal Justice Information Services (CJIS) Division's NICS Section has processed your application and has determined you are not eligible to be entered into the VAF. The record you matched by descriptors contains information that falls under the following federal prohibitive information: Title 18, United States Code, Section 922(g)(4): A person who has been adjudicated as a mental defective or who has been committed to a mental institution.

If you wish to challenge the accuracy of the record(s) upon which your VAF rejection is based, you may contact:

NICS Appeals Office, OMH
44 Holland Avenue
Albany, NY 12229
Phone Number: 518-474-5554
Website: www.omh.ny.gov/omhweb/nics/
NICS Record Identifier: 1641665122
Date of Entry: February 21, 2014

When you have obtained documentation, please submit the enclosed VAF application, fingerprint card, and any pertinent documentation to the FBI Criminal Justice Information Services Division's National Instant Criminal Background Check System Section, Appeal Services Team, Post Office Box 4278, Clarksburg, West Virginia 26302-9922.

NICS Section
CJIS Division

Enclosures (2)

| | | | | | | | | | | | | | | | | | |
|---|--|------------------------|--|-------------------------|--|---|--|--|--|-------------------------|--|--|--|-------------------------|--|--|--|
| 1. Agency Saratoga Springs Police | | 402 | | INCIDENT REPORT | | NY0450100 | | <input checked="" type="checkbox"/> Supp | | SS-014543-14 | | SS-014543-14 | | 15. Time 11:28 | | | |
| 7. Report Day Thu | | 8. Date Jun 12 2014 | | 9. Report Time 11:28 | | 10. Occurred On/From Thu Jun 12 2014 11:28 | | 11. On/To Thu Jun 12 2014 11:28 | | 12. Date Jun 12 2014 | | 13. Time 11:28 | | 14. Date Jun 12 2014 | | | |
| 16. Incident Type POLICE INFORMATION | | | | | | 17. Business Name SSPD | | | | | | 18. Weapon(s) | | | | | |
| 19. Incident Address(Street No., Street Name, Bldg. No., Apt. No.) 5 LAKE AVE | | | | | | 20. City, State, Zip SARATOGA SPRINGS | | | | | | 21. Location Code 4601 | | | | | |
| 22. Offense | | | | | | 23. No. of Victims | | | | | | 24. No. of Suspects | | | | | |
| 25. Victim also complainant <input type="checkbox"/> Y <input checked="" type="checkbox"/> N | | | | | | | | | | | | | | | | | |
| 26. Victim also complainant <input type="checkbox"/> Y <input checked="" type="checkbox"/> N | | | | | | | | | | | | | | | | | |
| 27. Date of Birth | | | | | | 28. Age | | | | | | 29. Sex | | | | | |
| 30. Race | | | | | | 31. Ethnic | | | | | | 32. Handicap | | | | | |
| 33. Residence Status | | | | | | 34. Resident | | | | | | 35. Tourist | | | | | |
| 36. Commuter | | | | | | 37. Military | | | | | | 38. Homeless | | | | | |
| 39. Unk/Not Indicated | | | | | | 40. Social Security No. | | | | | | | | | | | |
| 41. Type/No | | | | | | 42. Name (Last, First, Middle) | | | | | | 43. Alias/Nickname/Maiden Name (Last, First, Middle) | | | | | |
| 44. Address (Street No., Street Name, Bldg. No., City, State, Zip) | | | | | | 45. Phone Res. | | | | | | 46. Phone Bus. | | | | | |
| 47. Date of Birth | | | | | | 48. Age | | | | | | 49. Sex | | | | | |
| 50. Race | | | | | | 51. Ethnic | | | | | | 52. Handicap | | | | | |
| 53. Skin | | | | | | 54. Light | | | | | | 55. Dark | | | | | |
| 56. Medium | | | | | | 57. Other | | | | | | 58. Occupation | | | | | |
| 59. Height | | | | | | 60. Weight | | | | | | 61. Hair | | | | | |
| 62. Eyes | | | | | | 63. Glasses | | | | | | 64. Build | | | | | |
| 65. Small | | | | | | 66. Medium | | | | | | 67. Large | | | | | |
| 68. Misc. | | | | | | 69. Address | | | | | | | | | | | |
| 70. Scars/Marks/Tattoos (Describe) | | | | | | | | | | | | | | | | | |
| 71. Vehicle Status | | | | | | 72. License Plate No | | | | | | 73. State | | | | | |
| 74. Exp. Yr. | | | | | | 75. Plate Type | | | | | | 76. Value | | | | | |
| 77. Veh. Yr. | | | | | | 78. Make | | | | | | 79. Model | | | | | |
| 80. Style | | | | | | 81. VIN | | | | | | | | | | | |
| 82. Color(s) | | | | | | 83. Towed By: | | | | | | 84. Vehicle Notes | | | | | |
| 85. To: | | | | | | | | | | | | | | | | | |
| 74. 2551:06/12/2014 11:32 - JOHN ALLEN, Special Assistant to the Commissioner of the State Office of Mental Health, oversees the mental health provisions of the SAFE ACT. He called this morning to advise that they have been dealing with SAMUEL Brewer who is federally prohibited from possessing firearms. Mr. Allen advised that he is concerned that Mr. Brewer appears to be escalating in his delusional/paranoid thoughts. Most recently, he appeared to be particularly desperate on Monday to get his guns back. Mr. Allen found out that on Tuesday Mr. Brewer had a mediation meeting with his wife, M B, which caused even greater concern. | | | | | | | | | | | | | | | | | |
| All officers are advised to use caution in dealing with Mr. Brewer. Any contact should be documented thoroughly. M B is currently living at | | | | | | | | | | | | | | | | | |
| 75. Inquiries (Check all that apply.) | | | | | | 76. NYSPIN Message No. | | | | | | 77. Complaint Signature | | | | | |
| 78. Reporting Officer Signature (Include Rank) | | | | | | 79. ID No | | | | | | 80. Supervisor's Signature (include Rank) | | | | | |
| 81. ID No | | | | | | 82. Status | | | | | | 83. Status Date | | | | | |
| 84. Notified/TOT | | | | | | 85. Status | | | | | | 86. Status Date | | | | | |
| 87. Status | | | | | | 88. Status Date | | | | | | 89. Status Date | | | | | |
| 90. Status | | | | | | 91. Status Date | | | | | | 92. Status Date | | | | | |
| 93. Status | | | | | | 94. Status Date | | | | | | 95. Status Date | | | | | |
| 96. Status | | | | | | 97. Status Date | | | | | | 98. Status Date | | | | | |
| 99. Status | | | | | | 100. Status Date | | | | | | 101. Status Date | | | | | |

COPY



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415



This is a **duplicate** of the notification that we previously sent you. Your initial letter was returned, and we are resending it so that you may sign up for credit / identity monitoring services if you have not done so already.

| | | | | |
|---|---|---|---|---|
| A | B | C | D | E |
|---|---|---|---|---|

PIN NUMBER: _____

Dear SAMUEL BREWER:

As you may know, the Office of Personnel Management (OPM) was the target of a malicious cyber intrusion carried out against the U.S. Government, which resulted in the theft of background investigation records. Most of the individuals whose information was stolen previously provided information for a background investigation were listed on a background investigation form by a spouse or co-habitant.

You are receiving this notification because we have determined that your Social Security Number and other personal information was included in the intrusion. As someone whose information was also taken, I share your concern and frustration and want you to know we are working hard to help those impacted by this incident. The Federal government will provide you and your dependent minor children with comprehensive identity theft protection and monitoring services, at no cost to you.

If you applied for a position or submitted a background investigation form, the information in our records may include your name, Social Security number, address, date and place of birth, residency, educational, and employment history, personal foreign travel history, information about immediate family as well as business and personal acquaintances, and other information used to conduct and adjudicate your background investigation.

If your information was listed on a background investigation form by a spouse, or co-habitant, the information in our records may include your name, Social Security number, address, date and place of birth, and in some cases, your citizenship information.

While we are not aware of any misuse of your information, we are providing a comprehensive suite of identity theft protection and monitoring services. We are offering you, and any of your dependent children who were under the age of 18 as of July 1, 2015, credit monitoring, identity monitoring, identity theft insurance and identity restoration services for the next three years through ID Experts, a company that specializes in identity theft protection. The identity theft insurance and identity restoration service coverage has already begun. You have access to these services at any time during the next three years if your identity is compromised.

To take advantage of the additional credit and identity monitoring services, you must enroll with ID Experts using the PIN code at the top of this letter. To enroll go to <https://www.opm.gov/cybersecurity>. You may also call 800-758-3004 to enroll in or ask questions about these services. I hope you will take advantage of these services.

Please note that OPM and ID Experts will not contact you to confirm any personal information. If you are contacted by anyone asking for your personal information in relation to this incident, do not provide it.

For additional resources such as information you may share with people listed on your forms, sample background investigation forms, types of information which may have been taken, and tips on how to protect your personal information, visit <https://www.opm.gov/cybersecurity>.

Sincerely,

Beth F. Cobert
Acting Director
Office of Personnel Management